

APPENDIX III

COMPARISON OF OPTIONS: PLACING GAO, GPO, AND THE LIBRARY UNDER CAA COVERAGE, FEDERAL-SECTOR COVERAGE, OR PRIVATE-SECTOR COVERAGE

The tables in this Appendix detail the principal differences among the three options for coverage of GAO, GPO, and the Library analyzed in Part III of this Report:

(1) CAA Option – Coverage under the CAA, including the authority of the Office of Compliance as it administers and enforces the CAA. (The Board takes as its model the CAA as it would be modified by enactment of the recommendations made in Part II of this Report.)

(2) Federal-Sector Option – Coverage under the statutory and regulatory regime that applies generally in the federal sector, including the authority of executive-branch agencies as they administer and enforce those laws in the federal sector.

(3) Private-Sector Option – Coverage under the statutory and regulatory regimes that apply generally in the private sector, including the authority of the executive-branch agencies as they administer and enforce those laws in the private sector.

To make these comparisons, the tables use four side-by-side columns. The first column shows the current regime at each instrumentality, described in four categories: (a) substantive rights, (b) administrative processes, (c) judicial procedures, and (d) substantive rulemaking processes, if any. The other three columns compare the current regime with the CAA option, the federal-sector option, and the private-sector option.

Items in the charts are marked with the following codes:

“=” indicates rights and procedures now applicable at the instrumentality that would remain substantially the same if alternative provisions were applied.

“+” indicates rights and procedures not now applicable at the instrumentality that would apply if alternative provisions were applied.

“–” indicates rights and procedures now applicable at the instrumentality that would no longer apply if alternative provisions were applied.

“~” indicates other changes in rights and procedures that would result if alternative provisions were applied.

“{ }” indicates the amendments to the CAA proposed in the Board’s three specific recommendations set forth in Part II of this Report, which are –

(1) Grant the Office the authority to investigate and prosecute violations of section 207 of the CAA, which prohibits intimidation and reprisal. (2) Clarify that section 215(b) of the CAA, which makes applicable the remedies set forth in section 13(a) of the OSHAct, gives the General Counsel the authority to seek a restraining order in district court in case of imminent danger to health or safety. (3) Make applicable the record-keeping and notice-posting requirements of the private-sector CAA laws.¹

The comparisons in these tables address the substantive rights afforded by the CAA or by the provisions of CAA laws² and other analogous provisions that apply to federal-sector employers, private-sector employers, or the three instrumentalities. Furthermore, in defining coverage under each option, the Board decided that the application of the CAA or of analogous federal-sector or private-sector provisions should supersede existing provisions affording substantially similar substantive rights or establishing processes and procedures to implement, remedy, or enforce such rights. Applicable provisions affording substantive rights having no analogue in the CAA, and processes to implement, remedy, or enforce such rights, would not be affected by the coverage described in the three options.

¹ In Part II of the Report, in addition to these three specific recommendations, the Board also made two general recommendations, see Sections B.4 and B.5 of Part II, which are not described in the tables in this Appendix. Also not described in the tables are: the modifications that Members Adler and Seitz believe should be made to the CAA, as applied to GAO GPO, and the Library, in order to preserve certain rights now applicable at those instrumentalities, see Section D.2 of Part III of this Report; and the recommendations made in Part I of the Report, see Sections C.1, C.2.(b), D.1.(b), and D.2.(b) of Part I of the Report.

² The term “CAA laws” refers to the eleven laws, applicable in the federal and private sectors, made applicable to the legislative branch by the CAA. The nine private-sector CAA laws are: the Fair Labor Standards Act of 1938 (29 U.S.C. § 201 et seq.) (“FLSA”), Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.) (“Title VII”), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) (“ADA”), the Age Discrimination in Employment Act of 1967 (29 U.S.C. § 621 et seq.) (“ADEA”), the Family and Medical Leave Act of 1993 (29 U.S.C. § 2611 et seq.) (“FMLA”), the Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.) (“OSHAct”), the Employee Polygraph Protection Act of 1988 (29 U.S.C. § 2001 et seq.) (“EPPA”), the Worker Adjustment and Retraining Notification Act (29 U.S.C. § 2101 et seq.) (“WARN Act”), and section 2 of the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”). The two federal-sector CAA laws are: Chapter 71 of title 5, United States Code (relating to federal service labor-management relations) (“Chapter 71”), and the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.).